IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES, Appellee, v. James M. HALE Lieutenant Colonel (O-5) United States Air Force, Appellant.	APPELLANT'S BRIEF IN SUPPORT OF GRANTED ISSUES USCA Dkt. No. 18-0162/AF Crim. App. Dkt. No. 39101

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

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ISSUES PRESENTED

I.

THE LOWER COURT FOUND AS A MATTER OF LAW THAT PERONSAL JURISDICTION DOES NOT EXIST OUTSIDE OF THE HOURS OF INACTIVE-DUTY TRAINING. THE LOWER COURT PROCEEDED TO FIND PERSONAL JURISDICTION EXISTED OVER APPELLLANT BECAUSE HE WAS "STAYING" WITH HIS IN-LAWS. WAS THIS ERROR?

II.

WHETHER THE LOWER COURT ERRED WHEN IT CONCLUDED THE MILITARY JUDGE CORRECTLY INSTRUCTED THE MEMBERS THEY COULD CONVICT APPELLANT FOR CONDUCT "ON OR ABOUT" THE DATES ALLEGED IN EACH SPECIFICATION.

III.

WHETHER THE LOWER COURT ERRED IN CONCLUDING THE COURT-MARTIAL HAD JURISDICTION OVER SPECIFICATION 2 OF ADDITIONAL CHARGE I, AS MODIFIED TO AFFIRM THE LESSER INCLUDED OFFENSE OF ATTEMPTED LARCENY.

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (CCA) had jurisdiction pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866 (2012). The jurisdiction of this Court is invoked under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2012).

Statement of the Case

Appellant, Lieutenant Colonel (Lt Col) James M. Hale, was tried by a general court-martial composed of officer members at Joint Base San Antonio-Lackland, Texas, on November 6, 2015, and February 29 through March 5, 2016. (J.A. 42-43, 78, 225.) Contrary to his pleas, Lt Col Hale was convicted of one charge and an additional charge containing a total of four specifications of attempted larceny of military property of a value over $500, in violation of Article 80, UCMJ, 10 U.S.C. § 880 (2012); one charge containing one specification of making a false official statement, in violation of Article 107, UCMJ, 10 U.S.C. § 907 (2012); and one charge containing three specifications of larceny of military property of a value over $500, in violation of Article 121, UCMJ, 10 U.S.C. § 921 (2006 and 2012). (J.A. 36-41, 79, 223.)

Lt Col Hale was sentenced to forfeit all pay and allowances, to be confined for one month, and to be dismissed from the service. (J.A. 224.) The convening authority approved the adjudged sentence on July 1, 2016. (J.A. 25.)

In a published decision, the CCA modified two of the findings, affirmed the findings as modified, reassessed the sentence to that adjudged at trial, and affirmed the sentence. *United States v. Hale*, 77 M.J. 598, slip op. (A.F. Ct. Crim. App. 2018) (J.A. 11-14, 19-21.) On May 9, 2018, this Court granted Appellant's petition for grant of review, ordering briefing on the two issues presented by Appellant and specifying a third issue. (J.A. 1-2.)

Statement of Facts

Case Overview

Lt Col Hale faced trial for charges concerning fraudulent claims for lodging expenses while traveling to perform his duties as a lieutenant colonel in the Air Force Reserve. (*See* J.A. 448-69.) Under the governing regulations, lodging with relatives while traveling on orders was permitted, but claiming lodging expenses was prohibited absent certain exceptions. (J.A. 499-500; *see also* J.A. 400-47.)

As presented by the prosecution, the general nature of the allegations was that Lt Col Hale traveled from his home in Colorado to perform duties in Texas, stayed at his in-laws' residential home, received payment after claiming the maximum daily lodging expense for each day he stayed with his in-laws contrary to federal travel regulations, wrote checks to his in-laws even though they did not charge him anything and did not expect payment, created and submitted receipts for lodging with his in-laws, and, subsequent to the start of

the government's investigation, electronically deposited the checks in his in-laws' bank accounts without his in-laws' knowledge after they returned the checks, before routing the money back to his own account, sometimes through his children's bank accounts. (J.A. 80-125, 149-76, 367-99, 448-69.)

Charged Timeframes & Orders

Some of the specifications were alleged during times Lt Col Hale was on active duty. (J.A. 36-41, 226-27, 245-46, 255-83, 304-05, 314-16, 326-27, 340-62.) Others were alleged during dates when he performed inactive-duty training (IDT). (*Id.*)

Lt Col Hale's orders aligned with the alleged offenses and timeframes in the chronology set out in the table beginning on the following page:

Charged Timeframe	**Allegation**	**Orders Type**	**Order Dates (excluding travel)**	**J.A.**
"between on or about 26 June 2011 and on or about 30 September 2011"	Additional Charge I, Specification 1 – Larceny	Active Duty	June 26, 2011 – September 30, 2011	226-27
"between on or about 13 February 2012 and on or about 24 February 2012"	Additional Charge II, Specification 2 – Attempted Larceny	Active Duty	February 13-24, 2012	245-46
"between on or about 16 May 2012 and on or about 30 September 2012"	Additional Charge I, Specification 2 – Larceny	Active Duty & IDT	Active Duty: May 16, 2012 – September 30, 2012 IDT: October 1-5, 9-12, 15-17, 2012 (not all hours known)	255-83
"between on or about 20 October 2012 and on or about 3 December 2012"	Additional Charge I, Specification 3 – Larceny	Active Duty	October 22, 2012 – November 2, 2012 November 3, 2012 - December 3, 2012	304-05, 314-16
"between on or about 3 November 2012 and on or about 3 December 2012"	Additional Charge II, Specification 1 – Attempted Larceny	Active Duty	November 3, 2012 - December 3, 2012	314-16

"on or about 12 November 2013"	Charge I, Specification – False Official Statement	Active Duty & IDT	October 21, 2013 – November 1, 2013 November 4-8, 12-15, 18-20, 2013 (limited hours)	326-27, 340-62
"on or about 12 November 2013"	Charge II, Specification – Attempted Larceny	Active Duty & IDT	October 21, 2013 – November 1, 2013 November 4-8, 12-15, 18-20, 2013 (limited hours)	326-27, 340-62
"on or about 19 November 2013"	Additional Charge II, Specification 3 – Attempted Larceny	IDT	November 4-8, 12-15, 18-20, 2013 (limited hours)	340-62

Jurisdiction - Specification 3 of Additional Charge II

Among the alleged offenses grounded in IDT orders was Specification 3 of Additional Charge II, which alleged Lt Col Hale attempted to steal money "on or about 19 November 2013." (J.A. 38.) On that date, just like November 4-8, 12-15, and 18, 2013, he was on military orders for IDT from 0800-1200 hours and 1300-1700 hours. (J.A. 360-61.)

Lt Col Hale submitted a receipt for the lodging expenses he claimed indicating payment was made by check on November 19, 2013, for seventeen consecutive nights of lodging from November 3-19, 2013; however, the check itself is dated November 20, 2013. (J.A. 364-65.) "The Government could not establish what time the check was created." (J.A. 8.) Lt Col Hale later "created

a receipt for his stay and submitted the receipt and a copy of the . . . check" with his claim for reimbursement on December 3, 2013. (*Id.*)

Responding to the sole jurisdictional challenge by trial defense counsel, the military judge found there was jurisdiction over the attempted larceny alleged in Specification 3 of Additional Charge II. (J.A. 45-49, 57-67, 76, 476-80.) Contrary to the military judge's conclusion, the CCA determined the government failed to establish jurisdiction based on the check under Article 2(a)(3), UCMJ, 10 U.S.C. § 802(a)(3) (2012), because, "[u]nlike other types of reserve duty, an IDT is not a tour but a block of time," and therefore a showing of personal jurisdiction "require[s] proof that a reserve member was in a military status . . . at a given time." (J.A. 9-10.) The CCA also found that jurisdiction was lacking under Article 2(c), UCMJ. (J.A. 10.)

But the CCA embraced the military judge's conclusion that jurisdiction remained for attempted larceny "because staying 'at the [in-laws'] house during [Lt Col Hale's] stated duty hours' constituted a 'substantial step in his attempt to steal from the Air Force.'" (J.A. 10-11 (quoting J.A. 480).) The military judge supported this determination by concluding Lt Col Hale "stayed at the [in-laws'] residence through the period of 3 November to 20 November 2013. He kept his personal items in the room there." (J.A. 479-80.) The military judge conceded "this, in and of itself, does not show [Lt Col Hale] was at the [in-laws'] house during his stated 'duty hours worked,'" but found that "it was

done throughout the course of the 23 IDT days" and therefore "was a substantial step in his attempt to steal from the Air Force." (*Id.*)

Jurisdiction – Specification 2 of Additional Charge I

Also intertwined with IDT orders was Specification 2 of Additional Charge I, which alleged Lt Col Hale stole money "between on or about 16 May 2012 and on or about 30 September 2012." (J.A. 8.1.) The charged dates coincided with when Lt Col Hale was on active duty orders, but trial counsel relied on subsequent dates when Lt Col Hale was on IDT orders to establish the completed offense. (J.A. 196-97, 258-74.)

As found by the CCA, Lt Col Hale's "scheme was set in motion" before the charged timeframe and before Lt Col Hale was on any military orders: May 3, 2012. (J.A. 12.) He set up an authorization to travel "which, once approved, automatically disbursed 'scheduled partial payments' into Appellant's account. Appellant received three of these scheduled partial payments, all while in active duty status." (J.A. 11, 177.) These interim payments included the per diem compensation to which Lt Col Hale was entitled based on his projected meal and lodging expenses for his location. (*See* J.A. 93, 177-78.) The scheduled partial payments would be reconciled once the final voucher was filed at the end of the trip. (J.A. 179.)

Jurisdiction over this offense was challenged for the first time before the CCA. (J.A. 11.) Appellant requested the CCA only approve a finding of guilty to the lesser-included offense of attempted larceny. (*See id.*)

Consistent with the CCA's holding regarding the limits of jurisdiction resulting from IDT orders, the court below found Lt Col Hale "was not subject to the UCMJ . . . when he submitted his final travel voucher . . . and . . . when he received his final payment." (J.A. 12.) Combined with the creation of the initial authorization outside of any military status, the lower court found this precluded jurisdiction over the completed offense. (*Id.*)

But the CCA found jurisdiction over the lesser-included offense of attempted larceny based on "[t]he only actions Appellant took while in status under Article 2, UCMJ[:] lodging with his in-laws and receiving interim payments." (*Id.*)

Theory of Larceny

According to trial counsel, the two specifications were charged the way they were based on a broader construct distinguishing between completed larcenies and attempted larcenies: "[W]hen the accused filed vouchers in this instance but that payment didn't come until he was no longer on active duty orders for IDTs, we can't charge him with a completed larceny. The best the government can do in those instances is charge attempt." (J.A. 294; *see also* J.A. 146-48, 198.)

This guiding principle was not applied uniformly across the entirety of the larceny specifications. For example, like Specification 2 of Additional Charge I, the larceny alleged in Specification 1 of Additional Charge I involved Lt Col Hale staying with his in-laws, receiving scheduled partial payments, and submitting checks to his in-laws while on active duty orders, but did not include (a) setting up an authorization for the later scheduled partial payments, (b) submission of the final voucher for payment, and (c) receipt of the final payment, which fell outside of Lt Col Hale's time on active duty.[1] (J.A. 226-27, 234, 241, 243-44, 255-84, 291, 294-96, 300-03.)

Of the three larceny specifications, only Specification 3 of Additional Charge I involved every underlying act argued by the prosecution—Lt Col Hale staying with his in-laws, submission of his final voucher, writing a check to his in-laws, and receipt of funds for the voucher—occurring during periods when Lt Col Hale was on active duty. (J.A. 197-99, 304-05, 314-17, 319, 321, 323-25.)

[1] The prosecution argued the larceny under Specification 1 of Additional Charge I was completed through Lt Col Hale's receipt of each of the scheduled partial payments and did not discuss the final payment in argument. (J.A. 194.) Though not challenged before the lower court or in any of the granted issues, this reasoning parallels what led the CCA to approve the lesser-included offense of attempted larceny for Specification 2 of Additional Charge I, (*see* J.A. 11-12), and would therefore seem to be similarly affected by this Court's resolution of the specified issue.

Varying approaches were also taken to charging the attempted larcenies. Two of the four specifications alleged dates that generally aligned with dates Lt Col Hale stayed with his in-laws; one of these specifications charged the single IDT date Lt Col Hale filed his voucher for an earlier active duty tour's lodging with his in-laws, and the other specification charged a single date towards the end of Lt Col Hale's IDT tour that was preceded and followed by lodging with his in-laws. (J.A. 38-39, 245-47, 252-53, 284, 291, 294-96, 298, 300-03, 314-17, 319, 321, 323-328, 332, 334-35, 340-63, 365-66.)

In addition to trial counsel's reliance on the check outside of IDT hours for Specification 3 of Additional Charge II discussed above, trial counsel argued under the Specification of Charge II that the check Lt Col Hale wrote months later after Lt Col Hale was off orders constituted a substantial step. (J.A. 201.)[2]

Instructions

The members were instructed on theories of larceny and attempted larceny by wrongful taking and by wrongful obtaining, but not of wrongful withholding. (J.A. 483-502.) The prosecution argued consistently with those instructions. (J.A. 192-94, 199, 202, 207, 209.)

[2] A table setting out the acts underlying each larceny and attempted larceny is included as an appendix to this brief. The appendix is counted as part of the word count for purposes of compliance with Rule 24(c) of this Honorable Court's Rules of Practice and Procedure.

Each specification alleged the charged misconduct occurred "on or about" certain dates, or "between on or about . . . and on or about" certain dates. (J.A. 36, 38-39.) Of the numerous amendments made to the charge sheet, none of them affected this language. (J.A. 36-41.) The specifications were duplicated in the flyer presented to the members. (J.A. 481-82.)

During the presentation of the prosecution's case-in-chief, trial counsel used a law enforcement agent to tell the members that certain acts were committed by Lt Col Hale "on or about" the charged dates and when, in the assessment of the agent, Lt Col Hale was on active duty. (J.A. 96, 99-100, 104, 106-07, 111, 114, 118, 125.) The members also asked the agent to explain the importance of whether Lt Col Hale was paid while on active duty. (J.A. 147-48.) Not all of the agent's determinations with regard to Lt Col Hale's duty status were correct. (*Compare*, *e.g.*, J.A. 111, *with*, J.A. 12.)

After the members heard all of the evidence, the military judge advised the members that he was about to take up instructions. (J.A. 180-82.) Over the ensuing two-plus hours, the military judge met with the parties to "work through the instructions as far as issues that could be addressed off the record, and I think we did that and that's what came out with the final version. We did hear there was a defense objection to a portion that I still determined should be in" the instructions. (J.A. 182-83, 188.)

The military judge instructed the members they must find the charged misconduct occurred "on or about" and "between on or about . . . and on or about" the dates detailed in the charge sheet and the flyer. (J.A. 36, 38-39, 481-83, 485-88, 490, 492-97, 499.) He also instructed the members about jurisdiction:

> Jurisdiction means the power of a court to try and determine a case and to render a valid judgment. Courts-martial are courts of special and limited jurisdiction. For example, courts-martial jurisdiction applies worldwide, but is limited in application to a certain class of people--members of the armed forces. Whether a court-martial is empowered to hear a case--whether it has jurisdiction--frequently turns on issues such as the military status of the accused at the time of the offense, or the military status of the accused at the time of trial. A court-martial does not have jurisdiction over the offense when the member is not in an active duty status at the time of the offense.
>
> You have heard evidence that the accused was not on active duty when certain vouchers were paid. I have previously found that the Government has established that this court-martial has jurisdiction to try the accused for the charged offenses. In considering whether the accused was on active duty, you are not to consider that information for whether this court-martial has jurisdiction to try the Accused for the charged offenses.

(J.A. 504.)

Trial defense counsel did not object to this portion of the military judge's instructions, or address the fact that each specification alleged Lt Col Hale committed the charged misconduct "on or about" certain dates. (J.A. 36, 38-39, 186.) The military judge's instructions to the members did not require them to find that misconduct alleged to have occurred during IDT orders was

actually committed while Lt Col Hale was within the duty hours set out in those orders. (J.A. 483-507.) But the instructions permitted the members to consider Lt Col Hale's monthly bank account balances after he wrote checks to his in-laws and alleged re-routing of those funds back to his own accounts after depositing the checks for the limited purposes of showing the plan, knowledge, intent, consciousness of guilt, and absence of mistake involved in the alleged taking. (J.A. 128-45, 502); *see also* Military Rule of Evidence (Mil. R. Evid.) 404(b).

In argument, the prosecution stressed the military judge's instructions, the charged "on or about" language, and the nexus to jurisdiction. (J.A. 191, 196, 198-200, 203-05, 221.)

For example, in discussing Specification 2 of Additional Charge II, trial counsel argued, "I want to talk to you a little bit about how the final voucher payment fits this specification. And what's key, members, is the on or about language. And so, if you look at that on or about language, that means we're not tied exactly to" the charged timeframe. (J.A. 196.)

Concerning Specification 3 of Additional Charge II, trial counsel never addressed the limited hours of Lt Col Hale's IDT duties or the specific conduct on the charged date. (J.A. 206.) Instead of focusing on the relevant actions from November 19, 2013, trial counsel focused on all of the dates that spanned

the "full range of when [Lt Col Hale] was on orders" beginning on November 3, 2013. (*Id.*)

On appeal, the CCA evaluated the instructions for plain error and concluded its analysis when it found there was no error. (J.A. 14-15.)

Summary of Argument

Jurisdiction is strictly confined to the boundaries established by Article 2, UCMJ. In this case, the alleged misconduct took place across times and dates when Lt Col Hale was and was not subject to military jurisdiction. Though correctly holding that jurisdiction under Article 2(a)(3), UCMJ, was limited to the hours Lt Col Hale was in IDT status, the CCA erred in applying that holding to multiple specifications. The CCA also looked past the implications of its holding and the caselaw governing jurisdiction when it affirmed the propriety of the military judge's instructions, which bolstered the prosecution's blurring of the lines between Lt Col Hale's conduct that was subject to UCMJ action and the conduct that was not.

Argument

I.

THE LOWER COURT ERRED WHEN IT FOUND PERSONAL JURISDICTION EXISTED OVER APPELLANT BASED ON "STAYING" WITH HIS IN-LAWS.

Standard of Review

Jurisdiction is a legal question reviewed *de novo*. *United States v. Ali*, 71 M.J. 256, 261 (C.A.A.F. 2012).

Law

Jurisdiction

"Jurisdiction is the power of a court to try and determine a case and to render a valid judgment." *United States v. Harmon*, 63 M.J. 98, 101 (C.A.A.F. 2006). A court-martial is a court of limited jurisdiction and cannot try an accused unless it has jurisdiction. *See United States ex rel. Toth v. Quarles*, 350 U.S. 11, 23 (1955); *Solorio v. United States*, 483 U.S. 435, 439 (1987). The bounds of jurisdiction are confined to the statutory bases set by Congress. *See United States v. Morita*, 74 M.J. 116, 122 (C.A.A.F. 2015).

Court-martial jurisdiction exists if there is jurisdiction over the offense, personal jurisdiction over the accused, and a properly convened and composed court-martial. *Harmon*, 63 M.J. at 101; *see also* Rule for Courts-Martial (R.C.M.) 201(b). In terms of the offense charged, "[t]here is no dispute that the government controls the charge sheet." *United States v. Reese*, 76 M.J. 297, 301 (C.A.A.F. 2017). When challenged, the government has the burden of proving jurisdiction by a preponderance of the evidence. R.C.M. 905(c)(2)(B); *United States v. Oliver*, 57 M.J. 170, 172 (C.A.A.F. 2002).

Subject matter jurisdiction exists over reservists based on the parameters set out in Article 2, UCMJ. *See Morita*, 74 M.J. at 120; *see also Oliver*, 57 M.J. at 172 (treating Article 2, UCMJ, as addressing subject matter jurisdiction); *but see United States v. Nealy*, 71 M.J. 73, 75 (C.A.A.F. 2012) (treating Article 2, UCMJ, as governing personal rather than subject matter jurisdiction). "[B]oth the Supreme Court of the United States and this Court have insisted that courts-martial not exercise jurisdiction beyond that granted by the applicable statutes." *Willenbring v. Neurauter*, 48 M.J. 152, 157 (C.A.A.F. 1998), *rev'd on other grounds*, *United States v. Mangahas*, 77 M.J. 220, 222 (C.A.A.F. 2018). "[T]here is a presumption against federal subject-matter jurisdiction." *United States v. Jacobsen*, 77 M.J. 81, 85 (C.A.A.F. 2017) (citing *Kokkonen v. Guardian Life Ins. Of America*, 511 U.S. 375, 377 (1994)).

Under Article 2(a)(3), UCMJ, "little analysis is required to conclude that the operative statutory language refers to, and thus is limited to, a 'member[] of a reserve component' 'while on inactive-duty training.'" *Morita*, 74 M.J. at 120 (quoting 10 U.S.C. § 802(a)(3) (2012)) (citing *Robinson v. Shell Oil Company*, 519 U.S. 337, 340 (1997)). "[T]he [UCMJ] makes no provision for jurisdiction over someone who is 'essentially' on active duty. . . . [A]ctive duty is an all-or-nothing condition: A Reserve either is on active duty or he is not!" *Duncan v. Usher*, 23 M.J. 29, 34 (C.M.A. 1986).

Larceny

Article 121, UCMJ, criminalizes larceny. 10 U.S.C. § 921. The completed offense occurs when a servicemember subject to the UCMJ "wrongfully takes, obtains, or withholds, by any means, from the possession of the owner . . . any money . . . with intent permanently to deprive or defraud another of the use and benefit of the property or to appropriate it to his own use." *Id.*

"As used in Article 121, UCMJ, the single term 'larceny' encompasses and consolidates what in the past were separate crimes" of stealing by wrongful taking, stealing by wrongful withholding, and stealing by wrongful obtaining. *United States v. Lubasky*, 68 M.J. 260, 263 (C.A.A.F. 2010) (citing *United States v. Antonelli*, 35 M.J. 122, 124 (C.M.A. 1992)); *see also United States v. Aldridge*, 8 C.M.R. 130, 132 (C.M.A. 1953). A larceny by withholding occurs, for example, "once a servicemember realizes that he or she is erroneously receiving pay or allowances and forms the intent to steal that property." *United States v. Helms*, 47 M.J. 1, 3 (C.A.A.F. 1997). All that is needed to prove larceny is for the prosecution "to show that the accused wrongfully took, obtained, or withheld the property in question with the requisite intent." *Antonelli*, 35 M.J. at 127.

In *United States v. Hines*, 73 M.J. 119, 121 (C.A.A.F. 2014), this Court adopted the reasoning and holding of *United States v. Billingslea*, 603 F.2d 515, 520 (5th Cir. 1979), to define the unit of prosecution for larceny: "[T]he

formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, will result in the taking or diversion of sums of money on a recurring basis, will produce but one crime." Looking at "whether wrongful receipt of money on a recurring basis constitutes one crime for the total amount, or multiple offenses for the amount received in each instance," this Court "focuse[d] on the actor 'at or near the starting point of the illegal activity.'" *Id.* at 122-23 (quoting *Billingslea*, 603 F.2d at 520). Ultimately, this Court determined "that 'the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, will result in the taking or diversion of sums of money on a recurring basis, will produce but one crime.'" *Id.* at 123 (quoting *Billingslea*, 603 F.2d at 520).

Attempt

"An attempt . . . is an inchoate offense." *United States v. Simpson*, 77 M.J. 279, 285 (C.A.A.F. 2018) (citation omitted). The four elements of attempt are:

> (1) [T]hat the accused did a certain overt act; (2) that the act was done with the specific intent to commit a certain offense under the code; (3) that the act amounted to more than mere preparation; and (4) that the act apparently tended to effect the commission of the intended offense.

United States v. Payne, 73 M.J. 19, 24 (C.A.A.F. 2014). Conviction for attempt is possible even when the full offense is consummated. 10 U.S.C. § 880(c); *United States v. Hyska*, 29 M.J. 122, 125 (C.M.A. 1989).

"[C]riminal-attempt offenses acquire their allowable unit of prosecution from the offense attempted. The fact that several federal statutes, which make it a crime to commit *or attempt to commit* a certain offense, have the same allowable unit of prosecution for the attempted and completed offense is indicative of this principle." *Ex parte Miller*, 394 S.W.3d 502, 509 (Tex. Crim. App. 2013) (citations omitted) (emphasis in original).

"There is an 'elusive' line separating mere preparation from a substantial step." *United States v. Winckelmann*, 70 M.J. 403, 407 (C.A.A.F. 2011) (quoting *United States v. Schoof*, 37 M.J. 96, 103 (C.M.A. 1993)). "[T]he act must amount to 'more than mere preparation.' Accordingly, the substantial step must 'unequivocally demonstrat[e] that the crime will take place unless interrupted by independent circumstances.'" *Id.* (citations omitted).

This Court's decision in *Simpson* involved the performance of "overt acts, namely obtaining and withholding property that [the appellee] believed belonged to [a financial institution]." 77 M.J. at 285. Though insufficient to support a guilty plea to larceny based on a mistake regarding the victim of the offense, "[t]hese acts were done with the specific intent to commit a larceny . . . and constituted more than mere preparation," thereby supporting a conviction for the lesser-included offense of attempted larceny. *Id.*

Appellate courts may set aside a conviction and affirm a finding of guilt as to a lesser-included offense, but "[t]hat authority . . . is not without limits.

An appellate court may not affirm an included offense on a 'theory not presented to the' trier of fact." *United States v. Riley*, 50 M.J. 410, 415 (C.A.A.F. 1999) (quoting *Chiarella v. United States*, 445 U.S. 222, 236 (1980); citing *United States v. Standifer*, 40 M.J. 440, 445 (C.M.A. 1994)). "To do so would 'offend[] the most basic notions of due process." *Id.* (quoting *Dunn v. United States*, 442 U.S. 100, 106 (1979)).

Analysis

The prosecution purported to simplify this case for the members, focusing on a bright line distinction centered on when Lt Col Hale was paid and when he was on military orders of some kind. (*See* J.A. 204.) But the tangle of jurisdiction, duty status, and the alleged acts was far more complex.[3]

Part of this complexity resulted from Lt Col Hale's status as a reservist and the alleged crimes. Unlike the false official statement, each of the alleged crimes in this case spanned across multi-day and sometimes multi-month stretches. (*See* J.A. 36, 38-39.) Across these timeframes, Lt Col Hale was not "essentially" in one duty status or another. *See Duncan*, 23 M.J. at 34. Instead,

[3] While Issue I refers to personal jurisdiction and therefore accords with *Nealy*, 71 M.J. at 75, this Court's decisions in *Morita*, 74 M.J. at 120, and *Oliver*, 57 M.J. at 172, suggest that the proper conceptualization of this issue is actually as subject matter jurisdiction. Because the critical inquiry in this case is whether such jurisdiction existed at all, the term "jurisdiction" will be used in the rest of this brief to address this topic rather than grappling with which form of jurisdiction applies.

he went back and forth from being on military orders to not being on orders and back again. (J.A. 226-27, 245-26, 255-74, 304-05, 314-16, 326-27, 340-62.) As the lower court correctly determined, when performing IDT duties, those changes in status happened multiple times on the same day in the course of his four-hour duty blocks. (J.A. 9-10.)

But this complexity also resulted from the prosecution's own charging decisions. The Air Force chose each of the offenses set out on the charge sheet. *Reese*, 76 M.J. at 301; (J.A. 36, 38-39.) Rather than a unifying charging framework, the specifications varied without evidence of a uniform reason for doing so. The specifications varied in terms of the nexus between the date or dates alleged and when Lt Col Hale was on military orders of some kind, as well as the connection between the underlying acts and the dates when Lt Col Hale was on military orders. (*See id.*)

The resulting intricacy below the surface of the prosecution's case calls for the resolution of a series of four questions regarding whether the court-martial had jurisdiction over each larceny and attempted larceny specification. First, when was Lt Col Hale subject to military jurisdiction? Second, considering when the alleged scheme began, *i.e.*, the unit of prosecution, did each of the elements of the completed larceny occur when Lt Col Hale was subject to military jurisdiction? *See Hines*, 73 M.J. at 122-23. Third, if not, did the acts that occurred while Lt Col Hale was on orders amount to attempted

larceny? Fourth, if so and if considering attempt as a lesser-included offense, was the theory that would support such an attempt presented to the members? *See Riley*, 50 M.J. at 410.

For Specification 3 of Additional Charge II, the issue presented fails on the third step of this analytical framework. Under the first question, the CCA correctly determined—and Appellee has not subsequently challenged—that jurisdiction over Lt Col Hale was limited by Article 2(a)(3), UCMJ, to the hours he was in IDT status. (J.A. 9-10.) Those hours were set out in Lt Col Hale's orders. (J.A. 340-62.) Under the second question, the offense was never completed, thereby limiting the prosecution to the offense of attempt as charged. (*See* J.A. 363-64.) While the specified issue raises a question concerning the unit of prosecution, that added complication does not need to be reached here because, under the third analytical step, the lower court mistakenly concluded that jurisdiction persisted on the basis that Lt Col Hale was doing two things at once and that what he was doing amounted to a substantial step. (J.A. 10-11.)

On the one hand, Lt Col Hale was performing military duties during an IDT block and therefore subject to the UCMJ during the hours of 0800-1200 hours and 1300-1700 hours each day between November 3, 2013, and November 19, 2013. (J.A. 340-61, 455.) Indeed, as the CCA noted in discussing the check dated November 20, 2013, the government struggled to

show jurisdiction existed during those times. (J.A. 8.) Yet on the other hand, the lower court found Lt Col Hale was not just working, but also "staying" at his in-laws' house at the same time. (J.A. 10-11.) This conclusion is paradoxical.

Because jurisdiction for this offense rested solely on this conception of "staying," the CCA's conclusion amounts to a jurisdictional shell-game. Lt Col Hale could not be working and thereby subject to Article 2 jurisdiction, while simultaneously "staying" at his in-laws house and thereby not subject to Article 2 jurisdiction. A reservist's duty status is not so equivocating. *See Duncan*, 23 M.J. at 34.

Even the military judge recognized the irreconcilable proposition onto which the CCA latched, conceding that where Lt Col Hale kept his personal belongings "in and of itself, does not show [Lt Col Hale] was at the [in-laws'] house during his 'duty hours worked.'" (J.A. 480.) Instead, both the military judge and the CCA looked outside of Lt Col Hale's duty hours—to where he resided when he was not subject to military obligations during an IDT block—to grasp at a jurisdictional hook. (J.A. 10-11, 480.)

Such a basis falls outside the plain language of the strict parameters on jurisdiction set by Congress. 10 U.S.C. § 802; *see also Willenbring*, 48 M.J. at 157; *Morita*, 74 M.J. at 122; *Jacobsen*, 77 M.J. at 85. As such, jurisdiction was lacking for the alleged attempted larceny, and the conviction cannot stand.

But even if the act of "staying" was ripe for consideration as a matter of jurisdiction, the lower court still erred in its determination because "staying" was not a substantial step. While it may have attended to the wrongfulness of any claim for compensation, it failed to show that a crime was going to take place. *See Winckelmann*, 70 M.J. at 407. Lt Col Hale was allowed to stay with his in-laws, just not entitled to compensation for doing so. (J.A. 499-500; *see also* J.A. 400-47.)

The act of lodging with his in-laws was separate from all of the things that would evince the requisite specific intent, amount to more than mere preparation, and tend to effect the commission of a larceny. *Payne*, 73 M.J. at 24. At the conclusion of "staying," Lt Col Hale was no closer to illegally obtaining money from the military than he had been at the outset. And no progress towards a larceny can be found even when considering the monthly account balances and re-routing of funds introduced as Mil. R. Evid. 404(b) evidence. (J.A. 128-45, 502.) In other words, the act of "staying" on its own was merely preparation, meaning there was no attempt to prosecute at all. *Payne*, 73 M.J. at 24.

WHEREFORE, Appellant respectfully requests this Court set aside the finding of guilty for Specification 3 of Additional Charge II.

II.

THE LOWER COURT ERRED WHEN IT CONCLUDED THE MILITARY JUDGE CORRECTLY INSTRUCTED THE MEMBERS THEY COULD CONVICT APPELLANT FOR CONDUCT "ON OR ABOUT" THE DATES ALLEGED IN EACH SPECIFICATION.

Standard of Review

"Whether a panel was properly instructed is a question of law reviewed de novo." *United States v. Medina*, 69 M.J. 462, 465 (C.A.A.F. 2011) (quoting *United States v. Ober*, 66 M.J. 393, 405 (C.A.A.F. 2008)). If "there was no objection to the instruction, [the court reviews] for plain error." *United States v. Tunstall*, 72 M.J. 191, 193 (C.A.A.F. 2013) (citing *United States v. Wilkins*, 71 M.J. 410, 412 (C.A.A.F. 2012)); *see also United States v. McClour*, 76 M.J. 23, 25 (C.A.A.F. 2017).

To show plain error, "'Appellant has the burden of establishing (1) error that is (2) clear or obvious and (3) results in material prejudice to his substantial rights.'" *McClour*, 76 M.J. at 25 (quoting *United States v. Knapp*, 73 M.J. 33, 36 (C.A.A.F. 2014)). "Appellant has the burden of showing that the error had an unfair prejudicial impact on the members' deliberations." *United States v. Haverty*, 76 M.J. 199, 208 (C.A.A.F. 2017) (citing *Knapp*, 73 M.J. at 37). "'The failure to establish any one of the prongs is fatal to a plain error claim.'" *McClour*, 76 M.J. at 25 (quoting *United States v. Bungert*, 62 M.J. 346, 348 (C.A.A.F. 2006)).

Law

Under R.C.M. 920(a), the military judge "shall give the members appropriate instructions on findings." In turn, courts "presume that the panel followed the instructions given by the military judge." *United States v. Custis*, 65 M.J. 366, 372 (C.A.A.F. 2007) (citations omitted).

In *United States v. Thompson*, 59 M.J. 432, 439 (C.A.A.F. 2004), this Court considered a military judge's instruction to a panel allowing them to find the appellant guilty of lesser-included offenses that fell outside the statute of limitations without addressing whether the appellant waived the prohibition imposed by the statute of limitations. The members convicted the appellant of lesser-included offenses that included dates both inside and outside the statute of limitations. *Id.* at 436-38. "When the panel announced the findings in open court, those findings were final and were not subject to reconsideration by the members." *Id.* at 440. Based on the temporal bar imposed by the statute of limitations: "[T]he military judge was required to provide the members with instructions that focused their deliberations on a much narrower period of time -- . . . the period not barred by the statute of limitations." *Id.* at 440; *see also Griffin v. United States*, 502 U.S. 46, 59 (1991) ("Jurors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law – whether, for example, the action in question is protected by the Constitution, is time barred, or fails to come within the statutory definition

of the crime. When, therefore, jurors have been left the option of relying upon a legally inadequate theory, there is no reason to think their own intelligence and expertise will save them from that error."); *United States v. Piolunek*, 74 M.J. 107, 111 (C.A.A.F. 2015) (citing *Griffin* to conclude members are presumed to have complied with the instructions for the factual determination of whether images constituted child pornography); *United States v. Fuchs*, 218 F.3d 957, 962-63 (9th Cir. 2000) (finding plain error prejudicial to the substantial rights of defendants "[s]ince the trial court did not instruct the jury it must find that an overt act in furtherance of the conspiracy had occurred after February 3, 1991, the jury could have based its general verdict on acts alleged in the indictment that occurred outside the limitations period. Therefore, the district court erred when it failed to provide a statute of limitations instruction to the jury.").

"[T]he [UCMJ] makes no provision for jurisdiction over someone who is 'essentially' on active duty. . . . [A]ctive duty is an all-or-nothing condition: A Reserve either is on active duty or he is not!" *Duncan*, 23 M.J. at 34.

Analysis

The military judge's instructions failed to satisfy the requirements of R.C.M. 920, and the CCA erred when it concluded his instructions did not constitute plain error.

As applied to each specification, the instructions—coupled with the flyer—conveyed that Lt Col Hale could be convicted if the conduct occurred

"about" the charged timeframe. (J.A. 481-83, 485-88, 490, 492-97, 499.) But like all reservists, Lt Col Hale either was or was not on military orders, with no grey area in between. *See Duncan*, 23 M.J. at 34.

Through its decision to charge Lt Col Hale for conduct "on or about" when he was on duty and, in turn, "on or about" times when he was outside of military jurisdiction, the government flirted with a similar problem as the one presented in *Thompson*, namely, the risk that Lt Col Hale could be convicted for actions outside of the timeframe the government was permitted to prosecute. *Thompson*, 59 M.J. at 440; *see also Griffin*, 502 U.S. at 59; *Fuchs*, 218 F.3d at 962-63; *Piolunek*, 74 M.J. at 111. The prosecution could have elected to avoid this danger altogether by amending the charge sheet to remove the "or about" language, but chose not to despite making multiple other amendments to the charge sheet.[4] (J.A. 36, 38-39.) Instead, the prosecution doubled-down, arguing the "or about" language and asking the law enforcement agent to testify whether Lt Col Hale's actions were within the charged timeframes—regardless of the fact that there was a difference between the date the prosecution chose to charge and the times Lt Col Hale was actually subject to

[4] While the "or about" language on the charge sheet gave Lt Col Hale notice of the offense alleged, *see United States v. Hunt*, 37 M.J. 344, 347-48 (C.M.A. 1993), that purpose is distinct from the issue of instructions alleged as error here.

the UCMJ. (J.A. 96, 99-100, 104, 106-07, 111, 114, 118, 125, 191, 196, 198-200, 203-05, 221.)

Rather than recognizing this same risk, the military judge instructed the members they could convict Lt Col Hale of conduct "on or about" the charged dates—and therefore "on or about" the dates he was both on and off orders—and in doing so told the panel they could convict Lt Col Hale for conduct that was close to but outside the timeframe he was subject to jurisdiction under the UCMJ. This error was plain and obvious because greater precision is required of a military judge's instructions where, like the statute of limitations involved in the *Thompson* case, a finding outside of the permissible timeframe is barred by the court's limited jurisdiction. *Thompson*, 59 M.J. at 440; *see also Griffin*, 502 U.S. at 59; *Fuchs*, 218 F.3d at 962-63.

The error is particularly plain and obvious here when the lower court's conclusion that the military judge properly instructed the members is considered in light of its holding regarding the nexus between IDT status and jurisdiction. (J.A. 9-10.) Because Lt Col Hale was only subject to the UCMJ during the hours of IDT blocks, the military judge should have instructed the members that they needed to find Lt Col Hale's misconduct was not just "on"—rather than "on or about"—the dates Lt Col Hale was on military orders, but that they must also find his acts occurred during the time when he was on IDT orders.

The military judge's error materially prejudiced a substantial right because a conviction based on the charged "on or about" language left open the possibility that the members were given the option of relying on a legal theory devoid of jurisdiction. *See Griffin*, 502 U.S. at 59; *Piolunek*, 74 M.J. at 111. Such prejudice is evident for three reasons.

First, the difference between "on" and "or about" mattered for the bulk of the specifications. The prosecution recognized as much, repeatedly arguing the tie between the charged "on or about" language and jurisdiction. (J.A. 191, 196, 198-200, 203-05, 221.) For example, as noted above with regards to Specification 3 of Additional Charge II, the prosecution relied on Lt Col Hale "staying" with his in-laws and writing a check to show the charged attempt, where the critical issue was the prosecution's ability to show whether those acts were within IDT blocks. (J.A. 8-11, 206.)

Second, the members were closely attuned to the importance of jurisdiction and how it related to Lt Col Hale's orders. During the prosecution's case-in-chief, the members asked the law enforcement agent about that very subject. (J.A. 147-48.)

Third, the prosecution emphasized the "on or about" language in a way that encouraged the members to follow the erroneous "or about" option. Notwithstanding the bright line rule espoused by trial counsel in argument, the prosecution's approach to how the alleged misconduct needed to overlap with

Lt Col Hale's military duties was not coherent across the specifications. (J.A. 204.) For example, to convict for the completed offense of larceny, Specifications 1 and 2 of Additional Charge I required the members to rely on acts outside of when Lt Col Hale was subject to UCMJ jurisdiction. (J.A. 226-27, 234, 242, 243-44, 255-74, 284, 291, 294-96, 298, 300-03.) Similarly, the prosecution asked the members to convict Lt Col Hale of attempted larceny under the Specification of Charge II in part based on a check that he wrote months removed from military duties. (J.A. 201.)

This confusion was only amplified by the conclusory evidence presented through the law enforcement agent, who was asked to tell the members not only what Lt Col Hale did, but whether those acts were subject to military jurisdiction—a task that was sometimes completed incorrectly. (J.A. 12, 96, 99-100, 104, 106-07, 111, 114, 118, 125.) The combination of the confusing charging scheme and misleading evidence were brought together in argument, with trial counsel stressing that the "key . . . is the on or about language." (J.A. 196.)

Based on this material prejudice resulting from the military judge's plain and obvious instructional error, relief is warranted for the affected specifications. Though prejudice is not evident for the alleged false official statement and Specification 3 of Additional Charge I, which had every underlying act during the charged timeframe that Lt Col Hale was on orders,

the same cannot be said for the remaining specifications. (J.A. 304-06, 311, 312-16.) The most evidently affected specifications are those where the prosecution gave significant weight to conduct outside of the time Lt Col Hale was subject to UCMJ jurisdiction, namely, the Specification of Charge II, Specifications 1 and 2 of Additional Charge I, and Specification 3 of Additional Charge II.

WHEREFORE, Appellant respectfully requests this Court set aside the findings for Charge II and its specification, Specifications 1 and 2 of Additional Charge I, and Additional Charge II and its specifications, and the sentence.

III.

THE LOWER COURT ERRED IN CONCLUDING THE COURT-MARTIAL HAD JURISDICTION OVER SPECIFICATION 2 OF ADDITIONAL CHARGE I, AS MODIFIED TO AFFIRM THE LESSER INCLUDED OFFENSE OF ATTEMPTED LARCENY.

Standard of Review

Jurisdiction is a legal question reviewed *de novo*. *Ali*, 71 M.J. at 261.

Law

The law set out above under Issue I is adopted here.

Analysis

Like Issue I, the starting point for the analysis of this specification is to identify the dates Lt Col Hale was subject to jurisdiction under Article 2, UCMJ. Based on his orders, those dates of active duty were May 16, 2012,

until September 30, 2012, with IDT dates and times that followed in October 2012. (J.A. 255-74.)

Looking at whether those dates and times afforded jurisdiction over the completed offenses, the lower court correctly answered in the negative. (J.A. 12.) Considering the prosecution's efforts to prove jurisdiction, the CCA found Lt Col Hale "was not subject to the UCMJ . . . (1) when his scheme was set in motion on 3 May 2012; (2) when he submitted his final travel voucher . . . on 2 October 2012; and (3) when he received his final payment . . . on 12 October 2012." (*Id.*)

The result that flows from the remainder of the analytical framework is that Lt Col Hale's conviction cannot stand for three reasons.[5] First, the remaining acts did not constitute a unit of prosecution. Second, even if they did, they were not substantial steps. Third, even if they were substantial steps, the acts that occurred while Lt Col Hale was subject to UCMJ jurisdiction only support a withholding theory of larceny, which was not presented to the members and therefore could not be approved as a lesser-included offense.

[5] Though there may be a seeming conflict between this position and Appellant's request that the CCA approve the attempted larceny now called into question by the specified issue, more important is that the lower court was presented with the problems concerning jurisdiction and had its own independent statutory limitation to "affirm only such findings of guilty . . . as it f[ound] correct in law and fact" under Article 66(c), UCMJ. 10 U.S.C. § 866(c).

Unlike Issue I, the specified issue requires further inquiry of the unit of prosecution because, as the CCA noted, Lt Col Hale lodged with his in-laws and received interim payments while subject to the UCMJ. (*Id.*) The unit of prosecution that applies for attempted larceny is the same as the unit of prosecution for larceny. *See Ex parte Miller*, 394 S.W.3d at 509. In turn, the governing test for both larceny and attempted larceny would be the one this Court articulated in *Hines*, "focusing on the actor 'at or near the starting point of the illegal activity.'" 73 M.J. at 122-23 (quoting *Billingslea*, 603 F.2d at 520).

The assessment of the starting point must look only at what Lt Col Hale did while he was in military status. Though it was illegal for Lt Col Hale to obtain compensation for staying for free with his in-laws, the obtaining at issue took place through the authorization filed before Lt Col Hale's duties and through the voucher filed afterwards. (J.A. 12.) The starting point of the so-called "scheme" was therefore with the initial authorization that set up the automatic payments.[6] (*Id.*); *Hines*, 73 M.J. at 122-23. That starting point was outside of the court-martial's jurisdiction. (J.A. 12.) And a new starting point cannot be found in the acts of staying with Lt Col Hale's in-laws and receiving

[6] Though all of the larcenies and attempted larcenies could possibly be viewed under *Hines* as a singular scheme warranting only a single unit of prosecution, the analysis in this brief assumes, *arguendo*, the separate takings alleged could be attributed to "'an original intent to purloin and the evidence merely shows that this intent was acted on from time to time.'" *Hines*, 73 M.J. at 123 (quoting *Billingslea*, 603 F.2d at 520).

the interim payments that flowed from the initial authorization, even considering the Mil. R. Evid. 404(b) evidence presented to the members. (*See* J.A. 128-45, 502.)

However, even if those two acts could qualify as a unit of prosecution for attempted larceny, they could not support the attempt found by the CCA. Admittedly, the act of "staying" with Lt Col Hale's in-laws in this instance is distinguishable from Issue I because Lt Col Hale was on active duty orders when he did it. (J.A. 255-74, 284, 291, 294-96, 298, 300-03.) But for the very same reasons as under Issue I, "staying" was mere preparation and failed to amount as a substantial step towards attempted larceny. *See Payne*, 73 M.J. at 24.

For similar reasons, the receipt of funds was also not a substantial step with the requisite specific intent. Lt Col Hale did not receive this money as the result of an act over which over which the military jurisdiction. Rather, it was money that Lt Col Hale automatically and passively received from what he "set in motion" before the military had jurisdiction. (J.A. 11-12, 177.)

Assuming the alleged acts constituted a unit of prosecution for attempted larceny and amounted to substantial steps, the final inquiry concerning whether this theory was presented to the members should result in set aside of the conviction of the lesser-included offense. *Riley*, 50 M.J. at 415, *but see Antonelli*, 35 M.J. at 127 (limiting "all that is needed" to prove larceny).

The members were presented with a case that Lt Col Hale wrongfully obtained the money he received, but jurisdiction was lacking over the filing of vouchers and authorizations that would support such a theory. (J.A. 284, 291, 294-96, 298, 300-03.) The members were also instructed and received argument on a taking and obtaining theory of larceny. (J.A. 192-94, 199, 202, 207, 209.) But looking only at what occurred while the military had jurisdiction—receipt of money and staying with his in-laws—the only theory of prosecution that could be supported without more information is a withholding theory of larceny, which was not presented to the members. (*See id.*)

While Congress has authorized convictions for attempt even where the completed offense is consummated, 10 U.S.C. § 880(c), that must be reconciled with the strict boundaries imposed by Congress through Article 2, UCMJ. Applying those strictures here, Lt Col Hale's conviction for Specification 2 of Additional Charge I cannot be upheld.

WHEREFORE, Appellant respectfully requests this Court set aside the finding of guilty for Specification 2 of Additional Charge I.

Respectfully submitted,

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[7] Counsel will be moving to a new duty station and assignment when Appellee's answer brief is due. Because of the potential for interruptions to counsel's access to this e-mail account while moving, counsel requests that responses to this pleading also be sent to the personal e-mail account included in the cc block of the electronic filing of this pleading.

CERTIFICATE OF FILING AND SERVICE

I certify that I electronically filed a copy of the foregoing with the Clerk of Court on June 8, 2018, pursuant to this Court's order dated July 22, 2010, and that a copy was also electronically served on the Air Force Appellate Government Division on the same date.

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CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

This brief complies with the type-volume limitations of Rule 24(c) because:

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This brief complies with the typeface and style requirements of Rule 37.

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APPENDIX

Charged Timeframe	**Allegation**	**Key Acts**	**J.A.**
"between on or about 26 June 2011 and on or about 30 September 2011"	Additional Charge I, Specification 1 – Larceny	Pre-travel authorization submission: June 21, 2011 Stay with in-laws: June 26, 2011 – September 30, 2011 Scheduled partial payments: July 26, 2011; August 25, 2011; September 26, 2011 Submit final voucher: October 13, 2011 Receive final payment: October 14, 2011 Lodging receipt: September 29, 2011 Check date: September 27, 2011	233, 241, 243-44
"between on or about 13 February 2012 and on or about 24 February 2012"	Additional Charge II, Specification 2 – Attempted Larceny	Pre-travel authorization submission: N/A Stay with in-laws: February 12-24, 2012 Scheduled partial payments: N/A Submit final voucher: February 28, 2012 Receive final payment: March 1, 2012 Lodging receipt: undated Check date: February 24, 2012	247, 252, 247-53
"between on or about 16 May 2012 and on or about 30 September 2012"	Additional Charge I, Specification 2 – Larceny	Pre-travel authorization submission: May 3, 2012 Stay with in-laws: May 15, 2012 – September 30, 2012 Scheduled partial payments: June 14, 2012; July 16, 2012; August 13, 2012; September 12, 2012 Submit final voucher: October 2, 2012; October 10, 2012 Receive final payment: October 12, 2012	284, 291, 294-96, 298, 300-03

		Lodging receipt: September 30, 2012	
		Check date: June 30, 2012; August 31, 2012; September 30, 2012	
"between on or about 20 October 2012 and on or about 3 December 2012"	Additional Charge I, Specification 3 – Larceny	Pre-travel authorization submission: N/A	306, 311, 312-13
		Stay with in-laws: October 21, 2012 – November 2, 2012	
		Scheduled partial payments: N/A	
		Submit final voucher: November 6, 2012; November 13, 2012	
		Receive final payment: November 21, 2012	
		Lodging receipt: undated	
		Check date: November 2, 2012	
"between on or about 3 November 2012 and on or about 3 December 2012"	Additional Charge II, Specification 1 – Attempted Larceny	Pre-travel authorization submission: N/A	317, 319, 321, 323-325
		Stay with in-laws: November 2, 2012 – December 3, 2012	
		Scheduled partial payments: N/A	
		Submit final voucher: December 14, 2012	
		Receive final payment: December 27, 2012	
		Lodging receipt: December 3, 2012	
		Check date: December 3, 2012	
"on or about 12 November 2013"	Charge II, Specification – Attempted Larceny	Pre-travel authorization submission: N/A	328, 332, 334-35
		Stay with in-laws: October 20, 2013 – November 1, 2013	
		Scheduled partial payments: N/A	
		Submit final voucher: November 12 2013	
		Receive final payment: December 10, 2013	
		Lodging receipt: undated	

		Check date: April 1, 2014	
"on or about 19 November 2013"	Additional Charge II, Specification 3 – Attempted Larceny	Pre-travel authorization submission: N/A	363, 365-66
		Stay with in-laws: November 3-20, 2013	
		Scheduled partial payments: N/A	
		Submit final voucher: December 3, 2014	
		Receive final payment: N/A	
		Lodging receipt: undated	
		Check date: November 20, 2013	